Dated: November 29, 1982.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Removal of Certain Conditions of Approval of Colorado Permanent Program Under Surface Mining Control and Reclamation Act of 1977 and Consideration of Additional Amendments Thereto

AGENCY: Surface Mining Reclamation and Enforcement Office (OSM), Interior.

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 906 by (1) removing certain conditions of approval of the Colorado permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), and (2) approving certain additional amendments to the Colorado program. Colorado has submitted material to OSM which satisfies some of the conditions of the Secretary's approval of December 15, 1980 (45 FR 82173–82214).

DATE: The removal of these conditions and the approval of these program amendments are effective on December 16, 1982.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, New Mexico Field Office, Office of Surface Mining, Suite 216, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

Background on the Colorado Program Submission

On February 29, 1980, OSM received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980, **Federal Register** (45 FR 82173–82214).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980, **Federal Register** (45 FR 82173–82214).

Background on the Secretary's Conditional Approval

The Secretary of the Interior determined that the Colorado program contained 45 minor deficiencies as follows:

a. Colorado's rules did not incorporate the large structure criteria of 30 CFR 780.25(f)/745.16(f); 30 CFR 816.46(q)/817.46(q); 30 CFR 816.46(t)/817.46(t); 30 CFR 816.49(a)(5)/817.49(a)(5), and 30 CFR 816.49(f)/817.49(f).

b. Colorado Rule 4.14.6 did not require stabilization and reseeding of rills and gullies deeper than nine inches when they occur in regraded areas.

c. Colorado Rule 4.15.7(2)(d)(ii) did not contain provisions to obtain the approval of the Director of OSM in the selection of alternative technical guidance documents for revegetation success as required in 30 CFR 816.116(b) and 817.116(b).

d. Colorado Rule 4.15.7(2)(d)(vi) did not provide that revegetation success standards on small mines shall be approved by the Director of OSM.

e. Colorado Rule 2.06.8(4)(c)(iii)(A) did not include the term "sinuosity" in the characteristics to be considered in the evaluation of an alluvial valley floor.

f. Colorado's program contained unacceptable provisions in rules 4.09.1(3), 4.26.2(5) and 4.27.3(8), which relate to alternative methods for excess spoil fills and the placement of materials related to mountain top removal and steep slope mining operations.

g. Colorado Rule 4.08.4(8) provided for an unacceptable waiver to the limitation on casting fly rock beyond the property line of a permittee.

h. Colorado's program did not contain rules which require plans for sedimentation ponds, coal processing, waste dams and embankments to comply with the requirements of the Mine Safety and Health Administration (MSHA).

i. Colorado Rule 2.06.6(2)(h) did not include the term "adjacent area" and instead, contained the unacceptable term "immediate vicinity" in the consideration of prime farmlands and revegetation success.

j. Colorado's definition of "willful violation" found in Rule 1.04(145) did not include violations of SMCRA and 30 CFR Chapter VII.

k. Colorado Rule 2.07.6(2)(h) did not contain provisions which require, as a permit condition, that an applicant submit proof that all reclamation fees required by 30 CFR VII Subchapter R have been paid.

l. Colorado's program did not contain a provision consistent with 30 CFR 786.27(b), requiring that each permit issued by the State insure that the permittee shall allow right of entry to authorized representatives of the Secretary.

m. Colorado Rule 2.07.4(3)(b) did not provide for notice of a formal hearing on a permit to be given to all interested parties.

n. Colorado's definitions of the term "operator" found in CRS 34–33–103(14) and Rule 1.04(80) required modification to mean, "any person engaged in surface coal mining and reclamation operations who removes or intends to remove more than 250 tons of coal from the earth within 12 consecutive calendar months in any one location."

o. Colorado's definitions of "surface coal mining operations," found in CRS 34–33–103(26) and Rule 1.04(127) did not include the phrase, "or other processing or preparation, loading of coal for interstate commerce at or near the mine site."

p. Colorado's statute, CRS 34–33–109(7)(f), and Rule 2.08.5 did not require that the holder of a valid permit may continue surface coal mining operations under said permit subject to CRS 34–33–123 beyond the expiration date until a final administrative decision on renewal is rendered if a renewal application is received by the Division at least 1 year prior to the expiration date of the permit.

q. Colorado's statute, CRS 34–33–114(3), did not contain provisions requiring consideration in the application process of an applicant's violation of any applicable rule or regulation of the United States, Colorado, or any other State.

r. Colorado's statute, CRS 34–33–122(4)(b), and Rule 5.02.2(3) did not provide for inspections on an "irregular basis."

s. Colorado Rule 5.02.3(2) did not implement the requirement of 30 CFR 840.12(a) that a search warrant is not required to conduct an inspection (except that Colorado may provide for its use with respect to entry into a building).

t. Colorado Rule 5.02.6(2) did not contain provisions requiring the Administrator to "furnish the complainant with a written statement of the reasons for such determinations and actions if any, taken to remedy the noncompliance", regarding a citizen complaint of noncompliance.

u. Colorado Rule 2.07.3(6)[b][i], relating to informal conferences,

contained the unacceptable phrase, "unless this requirement is waived by all parties interested in the conference."

v. Colorado Rule 3.03.2(6)(a), relating to filing a request for a hearing on a bond decision, did not specify that issuance of the Division's proposed decision be dated from the time the written notification to the permittee and other interested parties, required in Rule 3.03.2(5), is mailed.

w. Colorado rules 3.02.1(4) and 3.04.2(3), which apply to bond liability, contained the unacceptable phrase, "unless otherwise provided in the bond", and did not provide an exception to providing liability under any bond to all lands disturbed when (a) two or more bonds apply in combination to the permit area although a particular bond may apply to less than all lands disturbed or to lands disturbed prior to a date specified in the bond, and (b) the Division or Board determines that, in combination, the liability under such bonds extends to all lands disturbed.

x. Colorado Rule 3.02.2(4) did not require the Division to review each outstanding performance bond at the time permit renewals are processed under Rule 2.08.3.

y. Colorado Rule 3.03.1(2) was not consistent with the percentages for bond release provided for in 30 CFR 807.12(a).

z. Colorado Rule 3.03.1(4) did not have a provision requiring that no acreage shall be released from the permit area until the bond liability applicable to the permit area has been fully released under Rule 3.03.1(2)(c).

aa. Colorado Rule 3.03.1(3)(d) did not specify that in no case shall the total bond amount applicable to a permit area be less than $10,000.

bb–1. Colorado Rule 3.02.3(2) did not provide qualifications for determining whether or not selective husbandry practices that are consistent with 30 CFR 805.13(b), as amended, should be allowed.

bb–2. Colorado Rule 3.06 did not provide for bond forfeiture, form of the bond, bonding for subsidence, and other provisions consistent with 30 CFR Part 801.

bb–3. Colorado rules 3.02.4(2)(d)(vi)(c) and 3.02.4(2)(b)(v)(c) contained unacceptable language concerning amending the permit area in lieu of issuance of a cessation order for unbonded areas, and were not consistent with 30 CFR 806.12(g)(7)(iii) and 30 CFR 806.12(e)(6)(iii).

cc. Colorado Rule 3.03.1(3)(e) did not provide that the amount of bond retained be sufficient for the Division to complete the reclamation.

dd. Colorado Rule 3.04.1(1) was not consistent with the bond forfeiture criteria of 30 CFR 808.13(a).

ee. Colorado's statute, CRS 34–33–135(2) (a) and (b), was not in accordance with Section 520(b)(2) of SMCRA in not requiring a showing that a violation or order would "immediately affect a legal interest of the plaintiff" as a condition precedent to commencement of a citizen suit without 60 days prior notice.

ff. Colorado Rule 5.04.3(5) did not include a requirement that, if the Board review results in an order increasing a penalty, the person to whom the notice or order was issued shall forward the amount of the difference to the Division within 15 days after the order increasing the penalty is mailed.

gg. Colorado's statute, CRS 34–33–135(3)(b), was not in accordance with Section 520(a) of SMCRA by not allowing the Division or Board, if not a party, to intervene as a matter of right in citizen suits.

hh. Colorado's statute, CRS 34–33–123(4), and Colorado Rule 5.03.4 did not require that each notice of violation or cessation order shall be served on the operator or his designated agent in person, or by certified mail, return receipt requested. Instead, they contained an unacceptable provision allowing service no later than 24 hours after issuance.

ii. Colorado's statute, CRS 34–33–123(8)(d), did not specify that a notice of violation or cessation order shall be served on the operator or his designated agent no later than 120 days (rather than 60 days now provided for) after the notice or order describing the violation was originally issued.

jj. Colorado's statute, CRS 34–33–125(3), which relates to requests for temporary relief prior to decisions by the Board, did not specify that pending completion of investigation and hearing, any person with an interest which is, or may be adversely affected (rather than only the "operator" as is now provided) may file with the Board for temporary relief from any notice or order.

kk. Colorado Rule 5.03.3(2)(a) included an unacceptable paragraph, which provided an additional criterion for determining the existence of a pattern of violations based on the degree of fault versus negligence.

ll. Colorado's statute, CRS 34–33–126(2), and Rule 7.06.2 contained an unacceptable requirement for a good faith effort by petitioners to identify surface and mineral owners.

mm. Colorado Rule 5.03.6, which relates to attorneys' fees, was not consistent with 43 CFR 4.1290–4.1296.

nn. Colorado's program did not contain a provision for protection of State employees equivalent to the protection afforded Federal employees by Section 704 of SMCRA.

oo. Colorado's statute, CRS 34–48–102, contained an unacceptable provision allowing a priority of right exception to the restriction of mining under any building or other improvements without securing the owner against damages.

pp. Colorado's definition of "permittee" found in Rule 1.04(90) did not include a "person required to have a permit."

qq. Colorado Rule 4.05.6(8) did not specify minimum top widths for embankments less than 10 feet in height consistent with the formula found in 30 CFR 816.46(1) and 817.46(1).

rr. Colorado's statute, CRS 34–33–124, did not provide for notice to all interested persons of hearings on show cause orders or hearings to review citations issued for violations.

ss. Colorado Rule 5.02.2(4) was not consistent with 30 CFR 840.11(d)(3) because the former did not require that inspection reports be adequate to enforce the requirements of and carry out the terms and purposes of the State program.

Submission of Revisions and Program Amendments

On January 11 and February 25, 1982, OSM received from the State of Colorado material intended to satisfy all 45 program conditions. Pursuant to the 30 CFR 732.17 state program amendment procedures, OSM also received certain revisions to the State regulations.

OSM published a notice in the **Federal Register** on February 25, 1982, announcing receipt of these provisions and inviting public comment on whether the proposed program amendments corrected the deficiencies, and whether the Secretary should approve the additional amendments to the State program (47 FR 8207–8212). The public comment period ended March 29, 1982. A public hearing scheduled March 23, 1982, was not held because no one expressed a desire to present testimony. OSM reopened the public comment period on June 16, 1982, to invite further public comment on program amendments not described in the February 25, 1982, notice (47 FR 25979–25981).

Secretary's Findings

1. The Secretary finds the material submitted by Colorado on January 11 and February 25, 1982, corrects the deficiencies in the Colorado program as follows:

(a) In Colorado Rule 2.05.3(8)(a)(iii) the State requires, for structures meeting

or exceeding the size criteria of 30 CFR 77.216(a), that the permittee comply with the applicable requirements of the MSHA, 30 CFR 77.216 (1) and (2). These requirements include provisions for the computed minimum factor of safety range for the slope stability of the impounding structure, including methods and calculations used to determine each factor of safety. Therefore, the State provisions are no less effective than 30 CFR 780.25(f) and 784.25(f).

In Colorado Rule 4.05.6(10) the State requires, for sedimentation ponds with embankments greater than 20 feet in height or with a storage volume of 20 acre-feet or more, that the permittee meet the criteria of MSHA at 30 CFR 77.216. Colorado regulations do not specify the design requirements contained in 30 CFR 816.46(q), pertaining to spillways, embankment safety factor, and seepage barriers. However, the State's requirement for compliance with 30 CFR 77.216 specifies that the plan include a certification by a registered engineer that the design of the structure is in accordance with current, prudent engineering practices for the maximum volume of water, sediment, or slurry which can be impounded therein and for the passage of runoff from design storms which exceed the capacity of the impoundment. The State provisions therefore will result in design of structures no less effective than structures designed under the standards of 30 CFR 816.46(q).

In Colorado Rule 4.05.6(11)(b) the State requires that sediment ponds or impoundments with embankments greater than 20 feet in height, or with storage volumes greater than 20 acre-feet be examined in accordance with 30 CFR 77.216(3). Colorado Rule 4.05.6(11)(c) requires examination of sedimentation ponds not meeting the above size criteria, and quarterly reports to the Division or at such other interval as approved by the Division. The State provisions are, therefore, no less effective than 30 CFR 816.46(t) and 817.46(t) regarding examination of sediment ponds.

In Colorado Rule 4.05.9(1)(e), the State requires the design, construction, and maintenance of structures to meet requirements consistent with 30 CFR 816.49(a)(5) and 817.49(a)(5). These requirements include compliance with the minimum design requirements applicable to structures constructed and maintained under The Watershed Protection and Flood Prevention Act. The State rule also requires compliance with U.S. Soil Conservation Service Technical Release No. 60, "Earth Dams and Reservoirs", for impoundments meeting or exceeding the size requirements in 30 CFR 77.216(a). Other impoundments must comply with criteria contained in U.S. Soil Conservation Service Public Standard 378, "Ponds." Therefore, the Colorado requirements are no less effective than 30 CFR 816.49(a)(5).

In Colorado Rule 4.05.6(11)(b) the State requires an examination in accordance with 30 CFR 77.216(3) for sedimentation ponds or impoundments with embankments greater than 20 feet in height or having a storage volume of 20 acre-feet or more. Therefore, this requirement regarding examination of large sediment ponds and impoundments is no less effective than 30 CFR 816.49(f) and 817.49(f).

The amendments submitted by Colorado and discussed above correct the deficiencies and satisfy condition (a).

(b) Colorado Rule 4.16.6 amends the State program to require that, when rilling and gullying deeper than nine inches occur in areas that have been regraded and top-soiled, the rills and gullies shall be filled, graded, or otherwise stabilized and the area reseeded or replanted in accordance with Rule 4.15, unless the permittee demonstrates to the satisfaction of the Division that such rilling and gullying is not excessive and is consistent with post-mining land use. Rule 4.16.6 corrects the deficiency and satisfies condition (b).

(e) Colorado Rule 2.06.8(4)(c)(iii)(A) includes the term "sinuosity" as a characteristic to be considered in the evaluation of alluvial valley floors. This corrects the deficiency and satisfies condition (e).

(f) As part of Colorado's program submission the State requested approval for alternative provisions to the requirements of the Federal regulations relative to design standards for excess spoil fills, mountaintop removal operations and steep slope operations. Condition (f) required that Colorado delete the more flexible design standards and adopt standards consistent with 30 CFR Chapter VII. Colorado has not amended the State regulatory program to satisfy Condition (f). Instead the State presented additional reasoning for acceptance of the original proposal.

The Secretary agrees there is a need for flexibility in high altitude and semi-arid climates. The State's alternative methods can provide environmentally sound and structurally stable excess spoil fills, mountain top removal operations, and steep slope mining operations. Under the State's provisions the regulatory authority is required to thoroughly analyze a certified professional engineer's design for stability and environmental soundness in these circumstances.

Since the date of the Secretary's conditional approval of the Colorado program, the Federal regulations establishing the standard for approval of State programs at 30 CFR 730.5 were amended. The amended standard gave increased flexibility to States in the development of regulations to implement Federal requirements for State programs. Under the new standard, Colorado rules 4.091.1(3), 4.262.2(5) and 4.27.3(8) are no less effective than 30 CFR 816.71/817.71, Part 824 and Part 826, respectively, since the State's alternative methods can provide environmentally sound and structurally stable designs. Thus the State has corrected the deficiency and satisfied condition (f).

(g) The State of Colorado submitted amended Rule 4.084.4(8), which provides that flyrock, including blasted material traveling along the ground, shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the line of the property owned or leased by the permittee. The amended rule also deleted the waiver to the limitation. These amendments correct deficiencies in the State program and satisfy condition (g).

(h) The State of Colorado submitted amended Rule 2.05.3(4)(a)(iii), which requires that plans for sediment ponds and impoundments comply with the applicable requirements of 30 CFR 77.216 (1) and (2). In addition Rule 4.11.3 has been added which incorporates MSHA requirements pertaining to underground mine workings. These amendments correct deficiencies in the State program and satisfy condition (h).

(i) Colorado Rule 2.06.6(2)(g) includes the term "adjacent area" in place of "immediate vicinity," and thus satisfies condition (i).

(j) Condition (j) required Colorado to modify its definition of "willful violation" to incorporate all violations covered by 30 CFR 786.5. This Federal regulation refers to violations of "the Act, State or Federal laws or regulations" as "willful violation(s)." The State has amended Rule 1.04(152) containing its definition of "willful violation" to include violations of SMCRA and OSM regulations at 30 CFR Chapter VII, and thus has satisfied condition (j).

(k) Condition (k) required Colorado to include as a condition of permit approval a requirement that the

applicant submit proof that he/she paid all reclamation fees mandated by 30 CFR Chapter VII. The State has promulgated Rule 2.07.6(2)(o) which requires a permit applicant to submit proof that all reclamation fees required by Subchapter R of the Federal rules have been paid for all coal mining operations, and has thus satisfied condition (k).

(m) Colorado Rule 2.07.4(3)(b) contains a provision requiring that notice of a formal hearing on a permit application decision be given to all interested parties. This amendment to the State regulatory program satisfies condition (m).

(n) Colorado statute 34–33–103(14) has been amended to define "operator" to mean, "any person engaged in surface mining and reclamation operations who removes or intends to remove more than 250 tons of coal from the earth within 12 consecutive calendar months in any one location." In addition, Colorado Rule 1.04(80) defines "operator" to mean "any person engaged in surface coal mining and reclamation operations who removes or intends to remove more than 250 tons of coal from the earth or from any coal refuse piles within 12 consecutive calendar months in any one location." These provisions satisfy condition (n).

(o) Colorado statute 34–33–103(26)(a) and Rule 1.04(132) have been amended to define "surface coal mining operations" to include the phrase, "or other processing or preparation, loading of coal for interstate commerce at or near the mine site." These provisions satisfy condition (o).

(q) Colorado statute 34–33–114(3) has been amended to require a permit applicant to "file a schedule listing any and all notices of violations of this article and any applicable law of the United States or of this State, or any applicable rule or regulation of any department or agency of the United States, other States, and this State, * * *" and thus satisfies condition (q).

(s) Colorado adopted Rule 5.02.3(2) to give its representatives a right of entry to, upon, and through any coal exploration or surface coal mining operation "without a search warrant." This provision satisfies condition (s).

(t) Colorado adopted Rule 5.02.6(2) to require the Administrator to "furnish the complainant with a written statement of the reasons for such determinations and actions, if any, taken to remedy the non-compliance," regarding citizen complaints of noncompliance. This satisfies condition (t).

(u) The State of Colorado submitted an amendment to Rule 2.07.3(6)(b)(i), which provides for informal conferences on applications for bond release. The amendment deletes the provision for waiving the requirement that the conference be held in the locality of the subject mine site. This amendment satisfies condition (u).

(v) The State of Colorado has amended Rule 3.03.2(6)(a) pertaining to filing requests for a hearing based on a bond release decision. The amendment specifies that issuance of the Division's proposed decision be dated from the time the written notification to the permittee and other interested parties is mailed. The amendment satisfies condition (v).

(w) Colorado submitted an amendment to Rule 3.02.1(4), which deletes the phrase, "unless otherwise provided in the bond." Rule 3.02.1(4) has also been amended to provide for liability under bonds for all disturbed lands. The amendments correct the first part of deficiency (w) pertaining to deletion of the phrase "unless otherwise provided in the bond."

The second part of condition (w) was based on 30 CFR 808.12(c) which has since been suspended. The Federal rule required that liability on a bonded increment extend to the entire permit area, and was suspended because it was inconsistent with the incremental bonding system. Colorado has preserved its incremental system of bonding while assuring that bond liability extends to all lands disturbed. The second part of the condition based on suspended 30 CFR 808.12(c) is therefore removed as a condition of approval. Should OSM adopt a new regulation to replace the suspended 30 CFR 808.12(c) the State would be given sufficient time to adopt State regulations consistent with the new Federal provision.

The amendments to the State program discussed above, therefore, satisfy condition (w).

(x) Colorado submitted amended Rule 3.02.2(4), which requires the Division to review the amount of bond required for a permit area and the terms of acceptance of the bond at the time permit reviews are conducted under Rule 2.08.3 or every two and one-half years, whichever is more frequent. This provision provides for a bond review schedule adequate to ensure proper review of bond amounts, and thus satisfies condition (x).

(y) Instead of amending program regulations to address condition (y), Colorado has supplied cost figures and sound rational to support the conclusion that bond release percentages in 30 CFR 807.12(a) are inconsistent with the actual costs of reclamation in the State. Colorado regulations would allow release of up to 60 percent of the bond after backfilling, regrading and drainage control, without topsoiling, and up to 85 percent release of the bond after successful revegetation. The State's rationale for allowing up to 60 percent release of the bond prior to resoiling is accepted and the bond release percentages are found to be no less effective than the Federal release percentages.

Colorado submitted an amendment to Rule 3.03.1(2)(b), stating that up to 85 percent of the total bond amount applicable to an increment on a permit area shall be released upon the successful establishment of revegetation in accordance with the approved reclamation plan. Such release shall be based on the costs of reclamation activities including, but not limited to, replacement of topsoil, seeding, irrigating and fertilizing. The amendment to Rule 3.03.1(2)(b) along with the above finding that the State's bond release percentages are no less effective than 30 CFR 807.12(a) percentages satisfies condition (y).

(z) Colorado submitted amended Rule 3.03.1(4), providing that no bond shall be fully released until all reclamation requirements are fully met, and in no case shall the total amount applicable to a permit area be less than $10,000, in accordance with Rule 3.02.2(3), until bond for the entire permit area is fully released. No acreage shall be released from the permit area until all surface coal mining and reclamation operations on that areage have been completed in accordance with the approved reclamation plan. Amended rule 3.30.1(4) is no less effective than 30 CFR 807.12(c), and thus satisfies condition (z).

(aa) The State has adopted Rule 3.03.1(4), see condition (z) above, which requires that in no case shall the total bond amount applicable to a permit area be less than $10,000. This Rule 3.03.1(4) satisfies condition (aa).

(bb)(1) Colorado has established as program policy that the use of selective husbandry practices must be approved by the State. The evaluation performed by the State for its use will include those qualifications in 30 CFR 805.13(b). The policy provides that in evaluating the use of selective husbandry practices, the Division will, at a minimum, consider: (1) The probability of permanent revegetation success following the discontinuance of such practices, and (2) the compatibility of the use of such practices with the approved post-mining land use of the area covered by the bond. The Secretary finds this policy satisfies condition (bb)(1).

(bb)(2) Colorado states that Rule 3 of the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining provides for: specific liability for activities conducted as a result of surface coal mining and reclamation operations including all categories listed under 30 CFR 801.11; specific procedures for determining the amount of bond as required by 30 CFR 801.12; procedures for bond forfeitures as required by 30 CFR 801.13; the requirements of the form of such bonds as required by 30 CFR 801.14; and bonding procedures sufficient to initiate bonding for subsidence, construction of planned impoundments, conveying systems and treatment facilities for mine drainage as necessary to administer and enforce the purposes and provision of the State Act. These provisions satisfy condition (bb)(2).

(cc) Colorado Rule 3.03.1(3)(e) has been modified to provide that the amount of bond retained shall be sufficient for the Division to complete the reclamation required under an alternative postmining land use plan, and thus satisfies condition (cc).

(dd) Colorado has adopted criteria for bond forfeiture under Rule 3.04.1 which are the same as the forfeiture criteria found in 30 CFR 808.13(a), and has thus satisfied condition (dd).

(ff) Colorado Rule 5.04.4(3)(b) provides that where Board review results in an order increasing the amount of the assessed civil penalty, the person so assessed shall forward the amount of the difference to the Division within 30 days. 30 CFR 845.20(d) requires that the person to whom the notice or order was issued shall pay the difference to OSM within 15 days after the order is mailed to the person. The difference between the State's provision and the Federal provision in the number of days to pay the increased assessed civil penalty does not affect the State's ability to administer and enforce the penalty provisions of the program. Therefore, the State's provision is no less effective than the Federal rule. Accordingly, Colorado's amended rule satisfies condition (ff).

(gg) Colorado statute 34–33–135(2.5) includes a provision allowing, "the board or the division to intervene as a matter of right in any action commenced pursuant to paragraph (a) of subsection (1) of this section to which they are not otherwise a party", and thus satisfies condition (gg).

(hh) Colorado statute 34–33–123(4) and Rule 5.03.4(1) have been amended to require that each notice of violation or cessation order shall be served on the operator or his designated agent in person or by certified mail, return receipt requested, to the mine or the designated agent (deleting the requirement of service no later than 24 hours after issuance), and thus satisfies condition (hh).

(ii) Colorado statute 34–33–123(8)(d) and Rule 5.04.3(5)(c) have been amended to specify that a notice or order shall be served on the operator or his designated agent no later than 120 days after the notice or order describing the violation was orginally issued, and thus satisfies condition (ii).

(jj) Colorado statute 34–33–124(3) and Rule 5.03.5(5)(a) have been modified to allow any person with an interest which is or may be adversely affected by a pending investigation or outcome of a hearing contesting Division actions on a notice of violation or cessation order, to file a written request with the Board for temporary relief, and thus satisfies condition (jj).

(kk) Colorado statute 5.04.5(2)(a) has been modified by deleting the additional criterion for determining the existence of a pattern of violations based on degree of fault versus negligence, and thus satisfies condition (kk).

(ll) Section 522(c) of SMCRA creates a right to petition the regulatory authority for a designation of land as unsuitable for surface coal mining. This provision also requires that the designation petition allege facts and contain supporting evidence which would tend to establish its allegations. 30 CFR 764.13(b) specifies minimum informational requirements for the designation petition. With respect to designation petitions, Colorado Rule 7.06.2 imposes minimum requirements identical to those in the Federal rule, but also requires the petitioner to make a "good faith effort" to identify the surface and mineral owners of properties which may be included in the land area proposed for the unsuitability designation.

The State has not amended its regulation to eliminate the requirement for such good faith effort. Colorado maintains that its requirement is intended only to provide the State regulatory authority with information of record which may have been discovered during the preparation of the petition. In support of its position, the State points to the footnote in the sample form attached to its resubmission, which provides that the absence of such information "will not adversely effect the administrative processing of this petition or the validity of the allegation and supporting evidence." According to Colorado, a "good faith effort" does not require the petitioner to do a title search, and in no way affects the obligation of the State regulatory authority to notify all owners of land included in the area covered by the petition.

The Secretary finds that Colorado's explanation and use of the term "good faith effort" gives clear indication to prospective petitioners that information on surface and minerals owners of lands within the petition areas is optional. The Secretary finds the State provisions to be consistent with 30 CFR 764.13(b). The State's provisions satisfy condition (ll).

(nn) On June 17, 1982, OSM published final rules which, *inter alia*, eliminated the requirement that State programs contain a provision comparable to SMCRA Section 704 (47 FR 26356–26367). Condition (nn) is therefore, removed as a condition of approval.

(pp) Pursuant to condition (pp), the Secretary required Colorado to modify its regulations to include within the definition of "permittee" a person required to have a permit. Colorado states that Section 34–33–103(14) of the State Act defines the term "operator" as meaning any person engaged in surface coal mining and reclamation operations. Colorado further states that the use of the term "operator" in the State program parallels the use of the term "permittee" in the Federal regulations. This explanation that the State's definition covers persons required to have a permit satisfies conditions (pp).

(qq) Colorado submitted Rule 4.05.6(8)(h), specifying minimum top widths for embankments of structures that do not meet the size criteria of Rule 4.05.6(10). This Rule satisfies condition (qq).

(rr) Section 521(a)(4) of SMCRA requires advance notice to "all interested parties" of the time and place of any hearing concerning a show cause order, and Section 525(a) provides that written notice of a hearing to review citations for violations of the Act's requirements shall be given to the permittee and "any (other) person having an interest which is or may be adversely affected." CRS 34–33–124(1)(b), as amended, and Rule 5.03.5(3)(b) require that written notice of the time and place of any enforcement hearing shall be given to "the operator, and any other persons requesting a hearing, and *all other persons expressing an interest.*" (Emphasis supplied). OSM practice reveals that, for hearings conducted pursuant to SMCRA sections 521(a)(4) and 525(a), notice is provided to persons who have expressed an interest in the proceeding. Colorado's statute and rule do not differ from OSM's interpretation of SMCRA. Therefore, the amendments satisfy condition (rr).

2. The Secretary has not completed his review of the material submitted by Colorado on January 11 and February 25, 1982, to correct the remaining deficiencies in the Colorado program. The Secretary will announce his decision on these State program amendments at a later date. These deficiencies are conditions (c), (d), (l), (p), (r), (bb)(3), (ee), (mm), (oo) and (ss).

3. The Secretary finds the following program amendments submitted by Colorado on January 11 and February 25, 1982, pursuant to the 30 CFR 732.17 procedures, in accordance with the provisions of SMCRA and consistent with the requirements of 30 CFR Chapter VII and hereby approves them:

a. Colorado Rule 1.03.3(2), as amended, provides for a monthly agenda of the Board to be published with a brief description of any affected land and the name of the applicant.

b. A revision to Rule 1.03.4(2)(a) to delete the phase, "any person in this State," and to replace it with the phrase, "any person contemplating opening a surface coal mining operation in this State."

c. The amendment to Rule 2.02.2(3) pertaining to notice of intent for coal exploration, to include the following: "The determination of substantial disturbance shall be made with reference to 1.04(127)."

d. A revision to Rule 2.03.4(3) to change the spelling of "principles" to "principals."

e. An addition to Rule 2.05.3(6) to include the following: "Permanent excess spoil and underground development waste disposal structures shall comply with 2.05.3(6)(b). Temporary overburden and underground development disposal (storage) structures shall comply with the applicable performance standards of Rule 4; information to demonstrate such compliance shall include, if applicable, location, geometry, and method of material placement."

f. A revision to Rule 2.05.4(2)(c) pertaining to the backfilling information required in the reclamation plan to require a plan for stream channel reconstruction in accordance with Rule 4.05.4 which establishes standards for stream channel diversions.

g. The title of Colorado Rule 2.05.6 is amended to read: "Mitigation of the Impacts of Mining Operations."

h. A revision to Rule 2.05.6(3)(a) to change the word "plan" to "application."

i. A revision to Rule 2.05.6(3)(c) to delete the phrase, "Each underground mine plan," and replace it with, "For underground mining activities, the application * * *."

j. Revisions to Rule 2.05.6(4) as follows:

(1) Delete the phrase, "each plan shall" and replace it with the phrase, "each application shall * * *."

(2) Delete the reference to Rule 2.07.4(2)(e)(ii) and replace it with a reference to Rule 2.07.6(2)(e).

k. A revision to Rule 2.05.6(6)(f)(iii) to delete "4.19.3" and replace it with "4.20.3."

l. The addition of Rule 2.06.12 which provides the requirements for surface coal mining and reclamation operations involving the removal of coal from coal refuse piles.

m. A revision to rule 2.06.5(1) clarifying the title of the section and including the following phrase: "non-mountaintop removal, steep slope surface."

n. A revision to Rule 2.06(2)(j) changing it to 2.06(2)(h).

o. A revision to Rule 2.06.8(3)(b) to change the word "application" to "applicant" in the last sentence of the rule.

p. A revision to Rule 2.06.8(5) to provide guidance for submission of applications for areas that include alluvial valley floors.

q. A revision to Colorado Rule 2.08.4(1)(f) to delete the reference to "1.04(72)" and replace it with "1.04(73)."

r. Revisions to Rule 2.08.4(5)(b)(ii) pertaining to permit hearings as follows:

(1) Replace the word "revised" with the word "raised" in the fourth sentence.

(2) Delete the phrase, "and state whether the requestor desires to have the hearing conducted in the locality of the proposed surface coal mining operations," in the fourth sentence.

(3) Replace "2.08.4(3)" with the phrase, "under the provisions of this subsection," in the fifth sentence.

(4) Replace the phrase, "within 10 days of said request," with the phrase, "at the next regularly scheduled Board meeting," in the fifth sentence.

s. A revision to Rule 2.08.4(5)(c)(i), relieving the Division of the requirement of publishing minor revisions in a local newspaper, and providing guidance for posting notice of minor revisions for public inspection. The Federal regulations at 30 CFR 788.12 do not require that public notice be made for the filing of a permit revision involving less than significant alterations in the approved permit.

t. A revision to Rule 2.08.4(5)(c)(ii) to delete the phrase, "30 days" and to replace it with the phrase, "10 days." The revision also relieves the Division of the requirement of publishing minor revisions in a local newspaper, and provides guidance for posting notice of minor revisions for public inspection. The revisions are not inconsistent with Federal regulations.

u. A revision to delete Rule 2.08.4(5)(c)(iii) which established opportunity for the filing of public comments and the holding of a public hearing regarding minor permit revisions. 30 CFR 788.12 does not require public notice and opportunity for a public hearing or comment for permit revisions that are minor in nature.

v. A revision to Rule 3.02.1(5)(b) to require bonding information and schedules for each incremental area to be covered by bond including sequences of anticipated release phases, and also to require that bond for the first increment shall include the full reclamation cost of the initial area being affected. The revision is consistent with 30 CFR Subchapter J.

w. A revision to Rule 3.05.1(1)(a) to delete "1.04(21)" and replace it with "1.04(22)."

x. A revision to Rule 3.05.1(7) to delete "60 days" and replace it with "180 days." The approved Colorado program provides for the filing of a "Statewide bond" for coal exploration. Rule 3.05.1(7) requires the filing of activity reports by those conducting exploration activities. The revision being approved requires the activity reports to be filed for each 180 day period instead of each 60 day period. The revision is not inconsistent with Federal regulations covering coal exploration.

y. A revision to Rule 4.05.2(2), requiring that sedimentation ponds and treatment facilities for surface drainage be maintained until the herbaceous cover of the revegetated area is at least 90% of the cover of the reference area or other standard approved pursuant to 4.15.7(2), and the untreated drainage from the disturbed area ceases to contribute additional suspended solids above the natural conditions. The untreated drainage must meet applicable State and Federal water quality standards, if any, for receiving streams. The revision to Rule 4.05.2(2) is consistent with 30 CFR 816.46(u) governing removal of sedimentation ponds.

z. A revision to Rule 4.05.3(6)(a) to delete the requirement that riprap be designed so that 90 percent of the rock size would be greater than 12 inches in diameter and no single rock larger than 25 percent of the width of the ditch. The revised Rule 4.05.3(6)(a) requires that channel linings, including channel riprap, shall be designed using standard engineering practices to pass safely the design velocities. By policy, riprap may be sized based upon an applicable riprap equation. Revised Rule

4.05.3.(6)(a) is consistent with 30 CFR 816.43(f).

aa. A revision to Rule 4.05.4, clarifying the title and including the following phrase: "and stream channel reconstruction."

bb. An addition to Rule 4.05.6(3)(c) to include the word "maximum" in the sentence, "The dewatering device shall not be located at a lower elevation than the maximum sediment storage volume." This provision is consistent with 30 CFR 816.46(d).

cc. The addition of Rule 4.05.6(9) establishing requirements to be met before sedimentation ponds can be removed during the reclamation process. These requirements are consistent with 30 CFR 816.46(u).

dd. A revision to Rule 4.06.5, deleting the word "redistributed" in the second sentence. Under the revision soil tests conducted to determine necessary nutrients or other soil amendments may be conducted on topsoil prior to redistribution over the reclaimed area. 30 CFR 816.25 does not specify when soil tests are to be performed and the revision is therefore consistent with the Federal requirement for soil tests.

ee. A revision to Rule 4.15.7(2)(d) to delete the word "plan" and replace it with the word "plant".

ff. A revision to Rule 4.15.8(7) to require that methods for substantial mitigation of adverse impacts approved by the Division in consultation with the U.S. Fish and Wildlife Service and Colorado Division of Wildlife must be included in the reclamation plan whenever predominantly woody vegetation is to be replaced with herbaceous vegetation.

gg. A revision to Rule 4.15.8(8) to delete the word "annual" and thereby require that the permittee only demonstrate that increases in woody plant cover and/or height have occurred.

hh. A revision to Rule 4.16.2(1) to clarify the basis for determination of the post mining land use for land that has been previously mined. The revision is consistent with 30 CFR 816.133(b) requiring comparison to land uses if the land had not been previously mined and had been properly managed.

ii. A revision to Rule 4.21.2(1) to delete the phrase: "250 tons or more," and to replace it with the phrase, "250 tons or less." This revision renders the provision consistent with 30 CFR Part 815 which establishes performance standards for coal exploration.

jj. A revision to Rule 4.21.2(2) to delete the phrase: "250 tons or more," and to replace it with the phrase: "more than 250 tons." This revision is consistent with 30 CFR Part 815.

kk. Colorado adopted amendments to Rule 4.05.3(5) to add specific provisions for reestablishing ephemeral streams that had been temporarily diverted. The new language requires the channel to be reestablished to functionally blend with the undisturbed drainage above and below the area to be reclaimed. The amendment is consistent with 30 CFR 816.44(d) pertaining to restoration of stream channels after temporary diversion and is therefore approved.

ll. Colorado adopted amendments to Rule 5.03.6 to accomplish the result by condition (mm), regarding the award of costs and expenses in administrative proceedings. The amendments are consistent with 43 CFR Part 4 as far as they go and are approved.

However, the amendments do not include provisions for:

(1) Costs and expenses regarding discrimination acts, pursuant to 30 CFR Part 830, as in 43 CFR 4.1294(a)(2);

(2) Costs and expenses from the State to a citizen as in 43 CFR 4.1294(b);

(3) Expert witness fees, and costs and expenses in seeking the award as in 43 CFR 4.1295; and

(4) The administrative appeal of a decision as in 43 CFR 4.1296.

As to the second omission, Colorado is presently one of the parties to a petition to OSM seeking to eliminate the requirement for the award of all such costs and expenses from the State and the Secretary is therefore granting Colorado an extension of time until May 20, 1983, to meet this portion of condition (mm). As indicated in Finding 2, the Secretary is deferring a decision on the other portions of condition (mm).

4. The Secretary has not completed his review of the remaining proposed regulation revisions, submitted by Colorado on January 11 and February 25, 1982. the Secretary will announce his decision on these State program amendments at a later date. These revisions involve the Colorado rules 2.07.6(3) and 4.05.2(7).

Public Comments

The Citizens Mining Project, Environmental Policy Institute; Colorado Open Space Council; National Audubon Society; Public Lands Institute of the Natural Resources Defense Council; Rocky Mountain Chapter of the Sierra Club; and the Western Colorado Congress made the following comments on the material submitted by Colorado:

1. A commenter stated that the approval of the Colorado program has automatically terminated pursuant to 30 CFR 732.13(i)(4) because the State has failed to correct certain deficiencies in its program, as enumerated in comments below, by the date required, June 1, 1982.

The Secretary disagrees with this conclusion. First, the State has submitted material in good faith to satisfy all 45 conditions of program approval well in advance of the applicable date. Second, the Secretary has not concluded that any of the material so submitted does not correct any deficiency. Third, Colorado still has the opportunity to submit additional material regarding the above-listed conditions, which the Secretary is still reviewing. Finally, the Secretary may extend the date by which any condition must be met if he finds the material submitted is inadequate to satisfy that condition.

2. A commenter stated that Colorado has failed to comply with condition (a). Many of the Federal rules involved, 30 CFR 780.25(f), 784.25(f), 816.46 (q) and (t), 817.46 (q) and (t), 816.49 (a)(5) and (f), and 817.49 (a)(5) and (f), set standards for plans or performance for ponds that are 20 feet or higher or impound 20 acre-feet of water. Colorado changes these criteria so that the standards for plans and performance apply only to reservoirs with a capacity of 1,000 acre-feet or a dam or embankment in excess of 10 feet measured from the bottom of the channel to the bottom of the spillway. Thus, Colorado sets a pond capacity 50 times that provided in the Federal Rule. Further, Colorado fails to require a stability analysis for ponds consistent with 30 CFR 780.25 and 784.25; fails to set performance standards for ponds consistent with 30 CFR 816.46(q); and fails to require inspection of ponds four times per year as required by 30 CFR 816.46(t).

The Secretary notes that Colorado Rule 2.05.3[8][a][iii] requires, for structures meeting or exceeding the size criteria of 30 CFR 77.216(a), that the permittee comply with the applicable requirements of MSHA provisions at 30 CFR 77.216 (1) and (2). The MSHA size criteria are a storage volume of 20 acre-feet or more, and a height of 20 feet or more. Requiring compliance with the requirements of MSHA therefore brings the same size structures covered by Federal regulations into compliance under the Colorado program. Coverage by the MSHA requirements also ensures conformity with Federal regulations pertaining to stability analysis, performance standards and pond inspection. See finding 1(a).

3. A commenter stated that in condition (f), OSM invited Colorado to develop specific design criteria for fills for submission to and evaluation by OSM. The State has failed to do so, merely repeating the argument previously rejected by OSM.

The Secretary has reevaluated the State's original alternative provisions relative to design standards for certain operations and found them acceptable under terms of the revised standard for approval of State programs. See Finding 1(f).

4. A commenter stated that Colorado has not amended its permitting standards pursuant to condition (h); rather, the State has amended only the performance standards for returning coal processing wastes to underground mines. Further, other performance standards for which OSM requires compliance with MSHA standards were not changed by the State.

The Secretary notes that Colorado submitted amended Rule 2.05.3(4)(a)(iii) which requires that plans for sediment ponds and impoundments comply with the applicable requirements of 30 CFR 77.216 (1) and (2). In addition, Rule 4.11.3 has been added which incorporates MSHA requirements pertaining to underground mine workings. See Finding 1(h) above noting that these amendments correct deficiencies in the State program and satisfy condition (h).

5. A commenter noted that Colorado has failed to promulgate rules to define the terms "operator" and "surface mining operations," and has failed to satisfy conditions (n) and (o).

The Secretary refers the commenter to Findings 1(n) and (o) above, noting that Colorado has promulgated Rules 1.04(80) and 1.04(132), defining these terms and has, therefore, corrected these deficiencies.

6. A commenter stated that Colorado has added a provision to its rules that provides an exception from the requirement of 30 CFR 808.12(c) that liability under a bond extend to the entire permit area, and has thus failed to comply with condition (w).

The Secretary notes that 30 CFR 808.12(c) has been suspended because it required that liability on a bond increment extend to the entire permit area and was thus ruled inconsistent with the incremental bonding system. Colorado has preserved its incremental system of bonding while assuring that bond liability extends to all lands disturbed. The Secretary is removing the second part of condition (w) related to 30 CFR 808.12(c) as a condition of approval. See Finding 1(w) above.

7. A commenter stated that while Colorado amended its rules to provide bond forfeiture criteria as required by condition (dd), it has added certain conditions on bond forfeiture where the permittee has violated the terms of the bond or has failed to conduct its operation in accordance with the program. These additional conditions are inconsistent with 30 CFR 808.13(a) (1) and (2), and Colorado has thus failed to comply with condition (dd).

The Secretary refers the commenter to Finding 1(dd) above. Colorado has adopted criteria for bond forfeiture under Rule 3.04.1 which are the same as the forfeiture criteria found in 30 CFR 808.13(a).

8. A commenter noted that as a condition on approval of its program, Colorado was required to amend its program to provide protection for government employees in accordance with Section 704 of SMCRA. Rather than complying with this requirement, Colorado has noted that current Colorado law imposes sanctions against persons who obstruct government operations. Colorado has made no showing, however, that the sanctions imposed by Colorado law are as stringent as those imposed under Section 704 of the Federal Act. Colorado has thus failed to comply with the requirements of condition (nn).

The Secretary points out that, as noted above, on June 17, 1982, OSM published final rules which eliminated the requirement that State programs contain a provision comparable to SMCRA Section 704 (47 FR 26356–26367). The Secretary is therefore removing condition (nn) as a condition of approval.

9. A commenter stated that pursuant to condition (qq), Colorado was required to amend Rule 4.05.6(8)(h), which sets a minimum top width for embankments, so that it would be consistent with 30 CFR 816.46(1) and 817.46(1). Colorado has adopted the standards of the Federal rules, but provides a wide-open exemption for embankments that meet the size criteria of Rule 4.05.6(10). Aside from the fact that Rule 4.05.6(10) establishes no size criteria, the exception essentially swallows the rule.

The Secretary notes that Colorado Rule 4.05.6(8)(h) establishes minimum top width criteria for embankments of structures that do not meet the size criteria of Rule 4.05.6(10). The size criteria are a pond capacity of more than 1000 acre feet, or an embankment in excess of 10 feet. The State's criteria for top width for embankments is the same as that established by 30 CFR 816.46(1) and 817.47(1). For these reasons, the Secretary finds that Colorado has satisfied condition (gg).

10. A commenter stated that pursuant to condition (ff), Colorado was required to amend its rules to require that where Board review results in a penalty increase, the additional amount will be forwarded to the Division within 15 days as is required by 30 CFR 845.20(d). Colorado has refused to comply with this condition, claiming that Rule 5.04.4(5) already requires such action.

The Secretary notes that Rule 5.04.4(3)(b) provides that where Board review results in a penalty increase, the additional amount will be forwarded within 30 days. For the reasons set forth in Finding 1(ff) above, Rules 5.04.4(5) and 5.04.4(3)(6) are consistent with 30 CFR 845.20(d), including the same or similar procedural requirements. The Colorado rule, therefore, corrects deficiency (ff).

11. A commenter stated that pursuant to condition (rr), Colorado was required to amend its statute to provide for notice to all interested persons of hearings on various enforcement actions as required by Section 521(a)(4) and 525(a) of SMCRA. Colorado has amended its statute to provide for such notice only to those persons expressing an interest. Colorado's law thereby insures that those persons who are affected by the hearing but unaware of its occurrence will be deprived of notice.

For the reasons set forth above, the Secretary finds the Colorado statute to be consistent with SMCRA and, therefore, corrects deficiency (rr).

12. A commenter stated that it is entirely unclear from the materials Colorado has submitted exactly what changes to its program the State proposes to make other than those necessary to meet the conditions of approval.

The Secretary also had some difficulty and, for this reason, reopened the public comment period on June 16, 1982, to insure that the public would have ample opportunity to comment on all proposed changes to the Colorado program (47 FR 25979–25981). The State has been advised that no amendments can be approved that do not appear in either the February 25 or June 16, 1982, **Federal Register** notices.

13. A commenter noted that pursuant to condition (i), OSM required the State to amend Rule 2.16.6(2)(h) to provide for a description of the area of prime farmland adjacent to the area proposed for mining. The State proposed to amend this rule in its July 16, 1980, resubmission but failed to do so. The State has noted, however, that its approved program contains a requirement at Rule 2.06.6(2)(g) for current estimated or actual yields of adjacent areas of unmined prime farmland for each soil map unit from the U.S. Department of Agriculture for each crop to be used in determining revegetation success. The commenter continued that rather than correct the defect in its program, Colorado has created another one. The use of the term

"adjacent area" in Rule 2.06.6(2)(g) is confusing and inappropriate, and appears to make the rule inconsistent with 30 CFR 785.17(b)(8). The current estimated yield requirement under the Federal rule is based on soil map units for crops to be used in determining revegetation success. Thus, while OSM appears to have acquiesced in Colorado's use of the "adjacent area" concept (45 FR 82183), its relevance is unclear.

The Secretary believes that the commenter fails to understand the use of the term "adjacent area." As noted above, the Secretary found that Colorado substituted the term "adjacent area" for the term "immediate vicinity" in Rule 2.06(2) as required under the terms of condition (i). For this reason, the Secretary has found that Colorado meets the terms of condition (i).

30 CFR 785.17(b) establishes application contents for permit applications which include prime farmlands. 30 CFR 785.17(b)(5) requires, where applicable, data that supports the use of other suitable materials, instead of the A, B, or C soil horizon, to obtain, on the restored area, equivalent or higher levels of yield as non-mined prime farmlands in the "surrounding area." 30 CFR 785.17(b) also uses the term "surrounding area" in establishing requirements for soil productivity. The Secretary finds the use of the term "adjacent area" for similar provisions in the Colorado program to be no less effective than 30 CFR 785.17.

With regard to the commenter's concern that Colorado has limited the permit information on yields for each soil map unit to adjacent areas, the Secretary believes it is the adjacent area that is of major concern.

14. A commenter noted that pursuant to condition (y), Colorado was required to amend the bond release percentages of Rule 3.03.1(4) so that they were consistent with 30 CFR 807.12. Colorado has refused to comply with this condition because of its unsubstantiated claim that the Federal bond release percentages fail to reflect reclamation costs in Colorado.

For the reasons stated in Finding 1(y) above, the Secretary finds the Colorado Rule to be no less effective than the Federal rule and, therefore, corrects deficiency (y).

15. A commenter observed that condition (mm) required Colorado to amend its regulations to provide for awards of costs and expenses, including attorneys' fees, consistent with 43 CFR Part 4. This commenter argued that Colorado had refused to comply with condition (mm) and acknowledged that its rules, in certain respects, were inconsistent with the Federal rules.

For the reasons stated in finding (ll) above, the Secretary finds Colorado's Rule 5.03.6 to be no less effective than the Federal rules with the four exceptions noted in that finding. In addition, the Secretary grants Colorado an extension of time until May 20, 1983 to comply with the remainder of condition (mm).

Approval of Amendments To Satisfy Conditions and Additional Program Amendments

Accordingly, conditions a, b, e, f, g, h, i, j, k, m, n, o, q, s, t, u, v, w, x, y, z, aa, bb(1), bb(2), cc, dd, ff, gg, hh, ii, jj, kk, ll, nn, pp, qq, and rr are hereby removed, and Colorado is granted an extension of time until May 20, 1983, to meet the portion of condition (mm) pertaining to costs and expenses from the State to a citizen. In addition, revisions to the following Colorado rules are approved pursuant to 30 CFR 732.17: Rules 1.03.3(2), 1.03.4(2)(a), 2.02.2(3), 2.03.4(3), 2.05.3(6), 2.05.4(2)(c), 2.05.6, 2.05.6(3)(a), 2.05.6(3)(c), 2.05.6(4), 2.05.6(6)(f)(iii), 2.06.12, 2.06.5(l), 2.06.6(2)(j), 2.06.8(3)(b), 2.06.8(5), 2.08.4(l)(f), 2.08.4(5)(b)(ii), 2.08.4(5)(c), 3.02.1(5)(b), 3.05.1(1)(a), 3.05.1(7), 4.05.2(2), 4.05.3(6)(a), 4.05.4, 4.05.6(3)(c), 4.05.6(9), 4.06.5, 4.15.7(2)(d), 4.15.8(7), 4.15.8(8), 4.16.2(1), 4.21.2(1), 4.21.2(2), 4.05.3(5) and 5.03.6. 30 CFR 906 is amended to indicate removal of the conditions and approval of the program amendments. The removal of the conditions of approval of the Colorado permanent program and the approval of the additional amendments to the program are effective December 16, 1982.

Additional Findings

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this approval. On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 6, and 8 of Executive Order 12291 for all actions taken to approve or conditionally approve state regulatory programs, actions, or amendments. Therefore, these program amendments are exempt from the preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Section 702(d) of SMCRA, 30 U.S.C. 1292(d), provides that approval of State programs, pursuant to Section 503(b), 30 U.S.C. 1253(b), shall not constitute a major action within the meaning of Section 102(2)(c) of the National Environmental Policy Act (NEPA), 42 U.S.C. 4332(2)(c). OMB has designated this rulemaking as a categorical exclusion from the NEPA process. Thus, OSM is exempt from the requirement of preparing an Environment Assessment (EA), Environmental Impact Statement (EIS), or FONSI for this rule.

Pursuant to the Regulatory Flexibility Act, Pub. L. 96-354, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

On April 22, 1982, the Environmental Protection Agency transmitted its written concurrence on the Colorado program amendments.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: November 24, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

PART 906—COLORADO

Accordingly, Part 906 of Title 30 is amended as follows:

1. 30 CFR 906.10 is revised to read as follows:

§ 906.10 State regulatory program approval.

The Colorado State program as submitted on February 29, 1980, and amended and clarified on June 11, 1980, was conditionally approved, effective December 15, 1980. Beginning on that date, the Colorado Department of Natural Resources was deemed the regulatory authority in Colorado for surface coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203.

(b) Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

(c) Office of Surface Mining, Administrative Record Room, 1100 L Street, N.W., Washington, D.C. 20240.

§ 906.11 [Amended]

2. 30 CFR 906.11 is amended as follows:

a. By removing and reserving paragraphs (a), (b), (e), (f), (g), (h), (i), (j), (k), (m), (n), (o), (q), (s), (t), (u), (v), (w), (x), (y), (z), (aa), (bb 1), (bb 2), (cc), (dd), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (nn), (pp), (qq), and (rr);

b. By revising paragraph (mm) to read as follows:

* * * * *

(mm)(1) The Secretary will initiate steps to terminate the approval found in § 906.10 on June 1, 1982, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions for:

(i) Costs and expenses regarding discriminatory acts, pursuant to 30 CFR Part 830, as in 43 CFR 4.1294(a)(2);

(ii) Expert witness fees, and costs and expenses in seeking the award as in 43 CFR 4.1295; and

(iii) The administrative appeal of a decision as in 43 CFR 4.1296.

The Secretary will initiate steps to terminate the approval found in § 906.10 on May 20, 1983, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions for costs and expenses from the State to a citizen as in 43 CFR 4.1294(b).

3. 30 CFR Part 906 is amended by adding a new § 906.15 to read as follows:

§ 906.15 Approval of amendments to state regulatory programs.

The following amendments are approved effective December 16, 1982:

Revisions submitted on January 11, 1982, and February 25, 1982, to Colorado Rules 1.03.3(2), 1.03.4(2)(a), 2.02.2(3), 2.03.4(3), 2.05.3(6), 2.05.4(2)(c), 2.05.6, 2.05.6(3)(a), 2.05.6(3)(c), 2.05.6(4), 2.05.6(6)(f)(iii), 2.06.12, 2.06.5(1), 2.06.6(2)(j), 2.06.8(3)(b), 2.06.8(5), 2.08.4(1)(f), 2.08.4(5)(b)(ii), 2.08.4(5)(c), 3.02.1(5)(b), 3.05.1(1)(a), 3.05.1(7), 4.05.2(2), 4.05.3(6)(a), 4.05.4, 4.05.6(3)(c), 4.05.6(9), 4.06.5, 4.15.7(2)(d), 4.15.8(7), 4.158(8), 4.16.2(1), 4.21.2(1), 4.21.2(2), 4.05.3(5), and 5.03.6.

[FR Doc. 82-34067 Filed 12-15-82; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Parts 53, 55, 81, 90, 92, 93, 120, 121, 122, and 127

Amendment or Removal of Obsolete Regulations

AGENCY: Treasury Department.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is revoking or amending certain regulations which are now obsolete because of changed statutory requirements or because of changed conditions. The regulations to be revoked pertain to gold and silver and emergency banking regulations. These regulations are out of date and their revocation will reflect current practice.

EFFECTIVE DATE: January 17, 1983.

FOR FURTHER INFORMATION CONTACT: Jordan A. Luke, Assistant General Counsel (Enforcement and Operations), Department of the Treasury, Room 2310, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. (202) 566-5404.

SUPPLEMENTARY INFORMATION: The amendments to Title 31 of the CFR are intended to eliminate regulations which have become obsolete because of changes in the underlying statutory authority. The reasons for the changes are explained in greater detail as follows:

Part 53 implements the order of the Secretary of the Treasury dated January 15, 1934, as amended, concerning the delivery of wrongfully withheld gold coins and bullion. The January 15, 1934 order required the delivery of gold coin and gold bullion to the Treasurer of the United States by January 17, 1934.

Part 53.1 provides that with respect to gold delivered after the January 17, 1934 deadline, the Treasury shall pay for gold coins at their face amount and for gold bullion at the price of $20.67 an ounce.

Public Law 93-110, as amended by Public Law 93-373, removed all restrictions of U.S. citizens purchasing, holding, selling or otherwise dealing in gold, thereby superseding the January 15, 1934 order requiring delivery of privately held gold to the Treasury and rendering obsolete Part 53, which implemented the order.

Part 55 contains President Roosevelt's Proclamation 2072, January 31, 1934, 48 Stat. 1730, which fixed the weight of the gold dollar at 15 $\frac{5}{21}$ grains nine-tenths fine, corresponding to a price of $35 per ounce. The proclamation was issued pursuant to authority granted the President by section 43(b)(2) of the Act of May 12, 1933 (48 Stat. 52). The President's authority to change the gold content of the dollar expired on June 30, 1943 (55 Stat. 396), after which time only Congress, by statute, could establish the value of the dollar in terms of gold.

On March 31, 1972, Pub. L. 92-268 (86 Stat. 116), the Par Value Modification Act, established a new par value for the dollar equal to one thirty-eighth of a fine troy ounce of gold, thereby superseding Proc. 2072. On September 21, 1973, Pub. L. 93-110 (87 Stat. 352), amending the Par Value Modification Act, changed the par value of the dollar to equal "0.828948 Special Drawing Right or, the equivalent in terms of gold, of forty-two and two-ninths dollar per fine troy ounce of gold".

The par value of the dollar, established by section 2 of the Par Value Modification Act, was repealed by section 6 of Pub. L. 94-564 (90 Stat. 2660). Under section 9 of that Act, the repeal became effective "upon entry into force of the amendments to the Articles of Agreement of the International Monetary Fund approved in resolution numbered 31-4 of the Board of Governors of the Fund" *i.e.*, adoption by the IMF of the proposed Second Amendment to the Articles of Agreement of the IMF. Under the amended IMF Articles of Agreement, which became effective April 1, 1978, the United States has no legal obligation to establish and maintain a par value for the dollar.

Part 81 establishes procedures for the receipt of newly-mined silver by the Treasury Department and related record keeping requirements, pursuant to sections 104 and 107 of the Act of July 23, 1965. That Act requires the Secretary to purchase at a price of $1.25 an ounce any silver mined after July 23, 1965, from natural deposits in the United States or any place subject to the jurisdiction thereof. Inasmuch as the current market price of silver is considerably in excess of $1.25 an ounce, there presently does not exist sufficient interest on the part of potential sellers of silver to warrant the continued maintenance of formal procedures to effect purchases of newly-mined silver at the statutory price. In light of the above, Part 81 is being repealed.

Part 90 prescribes policies regulations and charges of the Mints and assay offices for the acceptance and treatment of silver deposited for purchase under the provisions of the Newly-Mined Domestic Silver Regulations of 1965, the regulations of the (defunct) Office of Domestic Gold and Silver Operations (Parts 81 and 93 of 31 CFR) and title 31 of the United States Code. This part also provides a table of charges for special assays of gold or silver bullion samples and assays of ores. Those sections relating to the acceptance of silver are being repealed. Section 104 of the Act of July 23, 1965, requires the Secretary to purchase at a price of $1.25 an ounce, any silver mined after 1965, from natural deposits in the United States or any place subject to the jurisdiction thereof. Inasmuch as the current market price of silver is considerably in excess of $1.25 an ounce, there presently does not exist sufficient interest on the part of potential sellers of silver to warrant the continued maintenance of formal procedures to effect purchases of newly mined silver at the statutory price. In regard to the remainder of Part 90, which deals with the assaying of bullion, metals and ores, it has been determined that this function can be adequately performed by the private sector. The provision of this service is a

relic of times when U.S. coinage contained precious metals and citizens were authorized to present bullion to the Mint for exchange into bars. Currently, with the administrative termination of the exchange activity in 1970 (See 35 FR 15922 (1970)), no governmental purpose is served by continuing the special assays. The private assaying function of the Mint is in competition with commercial firms offering the same service and diverts Mint employees and facilities from the Mint's primary missions. Acordingly, all of Part 90 is being repealed.

Part 92 prescribes procedures for the receipt of "newly mined domestic silver" as provided by Parts 81 and 93 and for the redemption of U.S. coin. Part 92 also enumerates Mint practices in regard to the manufacture and sale of medals, and proof and uncirculated coins. Finally, this part details the practice governing disclosure of Mint records, pursuant to 5 U.S.C. 301 and 552.

Sections 92.1 and 92.2 are being repealed, inasmuch as there does not presently exist sufficient interest on the part of potential silver sellers to warrant continuation of the procedures detailed therein. (For detailed explanation, see discussion on Part 81). Section 92.3(a) is being repealed as there is little interest in the present or expected market, for redeeming gold coin at face value, or if the gold coin is worn or mutilated, at $20.67+ per ounce of fine gold. Section 92.3(b) is also being repealed as it merely refers to Part 100 for rules governing redemption of silver and minor coins. (We note further that redemption of silver and silver coins at face value is still authorized pursuant to 31 CFR 100.3). Section 92.4, "Sale of Silver" merely cross references the reader to Part 56, and accordingly is being deleted. The last sentence of section 92.5, dealing with application to the Director of the Mint for the manufacture of national medals designated by Congress, should be deleted as it is obsolete and meaningless. Congressional approval is necessary for the minting of national medals and application to the Director of the Mint cannot replace such approval.

The subsections of section 92 are renumbered appropriately in light of these revisions.

Part 93 establishes procedures for the purchase of newly-mined silver by the Treasury Department, pursuant to section 104 of the Act of July 23, 1965. That Act requires the Secretary to purchase at a price of $1.25 an ounce any silver mined after July 23, 1965, from natural deposits in the United States or any place subject to the jurisdiction thereof. Inasmuch as the current market price of silver is considerably in excess of $1.25 an ounce, there does not presently exist sufficient interest on the part of potential sellers of silver to warrant the continued maintenance of formal procedures to effect purchases of newly-mined silver at the statutory price.

Part 120 consists of Presidential Proclamations and Executive Orders concerning the 1933 bank holiday. These enactments have been obsolete for many years, but have never been specifically repealed. Part of the authority under which they were issued was the Trading With the Enemy Act of 1917, which empowered the President to declare national emergencies in periods other than wartime. The 1977 amendments to the Trading With the Enemy Act provided that the President can declare national emergencies under the Trading With the Enemy Act only in time of war. (The International Emergency Economic Powers Act, 50 U.S.C. App. 1701–1706, provides that the President can declare national emergencies with respect to threats which have their sources in whole or substantial part outside the United States.) The 1977 amendments also provided that all declared national emergencies in effect at the time of their enactment (1977) terminated in two years, unless extended. Because these emergencies were not extended, they lapsed in 1979.

Authority to issue these enactments was also derived from the Emergency Banking Act, 12 U.S.C. 95, which remains in effect. However, the Emergency Banking Act only states what powers the President may invoke during a national emergency with respect to banks which are members of the Federal Reserve System—it does not give the President authority to declare a national emergency for purely domestic reasons.

Because the President's powers to declare national emergencies in peacetime have been restricted by the 1977 amendments to the Trading With the Enemy Act and the International Emergency Economic Powers Act, enactments promulgated under the national emergencies which have terminated pursuant to the 1977 amendments have also terminated.

Part 121 contains the Emergency Banking Regulations issued under the Trading With the Enemy Act, the Emergency Banking Act and Procs. 2039 and 2049. This Part, like Part 120, became inapplicable when the 1977 amendments to the Trading With the Enemy Act were enacted and is being revoked.

Part 122 contains the general license to transact normal banking business for banks which are members of the Federal Reserve System. The general license was issued under Executive Order 6073, as amended. Proclamation 2725 (1947) excluded Federal Reserve member banks from the application of E.O. 6073, except with respect to gold transactions, and E.O. 11825 removed from E.O. 6073 the provisions pertaining to gold. The 1977 amendments to the Trading With the Enemy Act eliminated the statutory authority for E.O. 6073. Therefore, Part 122 is being eliminated.

Part 127 consists of the text of Executive Order 6560 of 1934 (§§ 127.0 to 127.7), regulating transactions of foreign exchange, transfers of credit and export of coin and currency, and specific prohibitions relating to countries occupied by axis forces during World War II (§§ 127.9–127.17). The authority for the Executive Order is based upon the Trading With the Enemy Act, 12 U.S.C. 95a, and E.O. 6260. The 1977 amendments restricted the scope of the President's authority to invoke the extraordinary powers contained therein, and eliminated the existing national emergencies. E.O. 6260 was revoked by E.O. 11825 (1974). Thus the statutory authority for E.O. 6560 and Part 127 no longer exists. The prohibitions contained in Sec. 127.9–127.17 are no longer applicable since they refer only to the World War II era. For these reasons, Part 127 is being revoked.

On June 14, 1982, the Treasury Department published its notice of proposed amendment or removal of regulations in the **Federal Register** (47 FR 25543). Interested parties were given sixty days to submit comments on the proposal. No comments were received. Accordingly, the Treasury Department is adopting the regulatory amendments as initially proposed.

List of Subjects

31 CFR Parts 53 and 55

Currency, Gold.

31 CFR Part 81

Silver.

31 CFR Parts 90 and 93

Gold, Silver.

31 CFR Part 92

Currency, Gold, Silver.

31 CFR Parts 120, 121 and 122

Banks, banking.

31 CFR Part 127

Banks, banking, Currency.

Executive Order 12291

It has been determined that this final rule does not meet the criteria for "major rules", set forth in Executive Order 12291 (February 17, 1981) in that it will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, the Secretary of the Treasury has certified under the provisions of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal authors of this document were:

John G. Murphy, Jr., Attorney/Adviser, Office of the General Counsel, Department of the Treasury, Room 2014, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220 (202) 566-8184.

Kenneth B. Gubin, Counsel, Bureau of the Mint, Room 1033, 501 13th Street, N.W., Washington, D.C. 20220 (202) 376-0564

However, personnel from other Treasury offices participated in its development.

Amendment of Regulations

Parts 53, 55, 81, 90, 92, 93, 120, 121, 122, and 127, Treasury Regulations (31 CFR Parts 53, 55, 81, 90, 92, 93, 120, 121, 122, and 127) are amended or removed as set forth below.

Dated: December 10, 1982.

Peter J. Wallison,

General Counsel.

The text of the amendments is as follows:

PART 53—[REMOVED]

1. Part 53 is removed.

PART 55—[REMOVED]

2. Part 55 is removed.

PART 81—[REMOVED]

3. Part 81 is removed.

PART 90—[REMOVED]

4. Part 90 is removed.

5. Part 92 is revised to read as follows:

PART 92—BUREAU OF THE MINT OPERATIONS AND PROCEDURES

Sec.

Authority: 5 U.S.C. 301.

§ 92.1 Manufacture of medals.

With the approval of the Director of the Mint, dies for medals of a national character designated by Congress may be executed at the Philadelphia Mint, and struck in such field office of the Mints and Assay Offices as the Director shall designate.

§ 92.2 Sale of "list" medals.

Medals on the regular Mint list, when available, are sold to the public at a charge sufficient to cover their cost, and to include mailing cost when mailed. Copies of the list of medals available for sale and their selling prices may be obtained from the Director of the Mint, Washington, D.C.

§ 92.3 Manufacture and sale of "proof" coins.

"Proof" coins, i.e., coins prepared from blanks specially polished and struck, are made as authorized by the Director of the Mint and are sold at a price sufficient to cover their face value plus the additional expense of their manufacture and sale. Their manufacture and issuance are contingent upon the demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, D.C. 20220.

§ 92.4 Uncirculated Mint Sets.

Uncirculated Mint Sets, i.e., specially packaged coin sets containing one coin of each denomination struck at the Mints at Philadelphia and Denver, and the Assay Office at San Francisco, will be made as authorized by the Director of the Mint and will be sold at a price sufficient to cover their face value plus the additional expense of their processing and sale. Their manufacture and issuance are contingent upon demands of regular operations. Information concerning availability and price may be obtained from the Director of the Mint, Treasury Department, Washington, D.C. 20220.

§ 92.5 Procedure governing availability of Bureau of the Mint records.

(a) *Regulations of the Office of the Secretary adopted.* The regulations on the Disclosure of Records of the Office of the Secretary and other bureaus and offices of the Department issued under 5 U.S.C. 301 and 552 and published as Part 1 of this title, 32 FR No. 127, July 1, 1967, except for § 1.7 of this title entitled "Appeal," shall govern the availability of Bureau of the Mint records.

(b) *Determination of availability.* The Director of the Mint delegates authority to the following Mint officials to determine, in accordance with Part 1 of this title, which of the records or information requested is available, subject to the appeal provided in § 92.6: The Deputy Director of the Mint, Division Heads in the Office of the Director, and the Superintendent or Officer in Charge of the field office where the record is located.

(c) *Requests for identifiable records.* A written request for an identifiable record shall be addressed to the Director of the Mint, Washington, D.C. 20220. A request presented in person shall be made in the public reading room of the Treasury Department, 15th Street and Pennsylvania Avenue, NW, Washington, D.C., or in such other office designated by the Director of the Mint.

§ 92.6 Appeal.

Any person denied access to records requested under § 92.5 may file an appeal to the Director of the Mint within 30 days after notification of such denial. The appeal shall provide the name and address of the appellant, the identification of the record denied, and the date of the original request and its denial.

PART 93—[REMOVED]

6. Part 93 is removed.

PART 120—[REMOVED]

7. Part 120 is removed.

PART 121—[REMOVED]

8. Part 121 is removed.

PART 122—[REMOVED]

9. Part 122 is removed.

PART 127—[REMOVED]

10. Part 127 is removed.

[FR Doc. 82-34163 Filed 12-15-82; 8:45 am]
BILLING CODE 4810-25-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 11 82-01]

Anchorage Grounds, Los Angeles and Long Beach Harbors, Calif.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: These regulations revise the anchorage regulations for Los Angeles and Long Beach Harbors, California. The affected area lies along the Terminal Island shoreline between Fish Harbor light number "4" and the Naval Base Mole light number "2". The construction of a rock dike to contain dredged spoils from the Los Angeles Harbor Deepening Project has created the need to reflect the shoreline changes in the anchorage regulations. The associated extension of a sewer outfall from the Terminal Island Sewage Treatment Plant has produced a need to create a new nonanchorage area to protect the sewer line. Also, to improve administration of General Anchorage "O" (33 CFR 110.214), the Coast Guard is placing a portion of the anchorage under the jurisdiction of the city of Los Angeles and incorporating the remainder into Commercial Anchorage "B" (33 CFR 110.214).

EFFECTIVE DATE: The amendments are effective January 17, 1983.

FOR FURTHER INFORMATION CONTACT: Lieutenant Louis S. Stanton, Marine Safety Division, Eleventh Coast Guard District, 400 Oceangate, Long Beach, CA 90822. Phone Number: 213-590-2301.

SUPPLEMENTARY INFORMATION: On August 30, 1982 the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (47 FR 38152). Interested persons were requested to submit comments and two comments were received.

Drafting Information

The principal persons involved in drafting the proposal are: LTJG Jeffrey A. Gabrielson, Vessel Management Officer, Coast Guard Marine Safety Office LA-LB and LT Catherine M. McNally, Project Attorney, District Legal Office, Eleventh Coast Guard District.

Discussion of Comments

One comment endorsed the proposed rulemaking. The other comment from NOAA pointed out an apparent typographical error in a longitude coordinate in the General Anchorage "O" designation. The final rule reflects the proper coordinate.

Economic Assessment and Certification

These regulations are considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). Their economic impact is expected to be minimal. The rules revise the boundaries of anchorages to reflect shoreline changes and place administration of an anchorage under the jurisdiction of a local agency desiring to control the anchorage. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities. Also, the regulations have been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and have been determined not to be major rules under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Final Regulations

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

§ 110.214 [Amended]

1. By revising § 110.214(a)(2) to read as follows:

(a) * * *

(2) *Commercial Anchorage B (Los Angeles and Long Beach Harbors).* An area enclosed by a line beginning at the southwestern corner of Reservation Point at latitude 33°43'18.0" N., longitude 118°16'00.2" W.; thence east southeasterly to latitude 33°43'13.8" N., longitude 118°15'51.4" W.; thence northeasterly to latitude 33°44'00.9" N., longitude 118°13'11.2" W.; thence northwesterly to the southern edge of the eastern extension of the Naval Base Mole at latitude 33°44'32.3" N., longitude 118°13'24.3" W.; thence southwesterly along the Naval Base Mole to Naval Base Mole Light 2 at latitude 33°44'25.5" N., longitude 118°13'49.0" W.; thence northwesterly along the Naval Base Mole to latitude 33°44'37.1" N., longitude 118°14'34.0" W.; thence southeasterly to latitude 33°44'14.2" N., longitude 118°14'25.0" W.; thence southwesterly to the east end of breakwater extension of the south containment dike, latitude 33°44'07.8" N., longitude 118°14'45.7" W.; thence southwesterly along the southern edge of the south containment dike to Fish Harbor Channel Light #3 at latitude 33°43'48.8" N., longitude 118°15'52.7" W.; thence west southwesterly along the southern edge of Fish Harbor west jetty until it intersects Reservation Point; thence along the eastern and southern shoreline of Reservation Point to the beginning point.

* * * * *

2. By revising § 110.214(a)(11) to read as follows:

(a) * * *

(11) *General Anchorage O (Los Angeles Harbor).* An area enclosed by a line beginning at the east end of the south containment dike breakwater extension, latitude 33°44'07.8" N., longitude 118°14'45.7" W.; thence southwesterly to the intersection of the south and east containment dikes, latitude 33°44'04.6" N., longitude 118°14'56.9" W.; thence northwesterly along the east containment dike to the Terminal Island shoreline, latitude 33°44'37.9" N., longitude 118°15'10.9" W.; thence along the Terminal Island shoreline to latitude 33°44'37.1" N., longitude 118°14'34.0" W.; thence southeasterly to latitude 33°44'14.2" N., longitude 118°14'25.0" W.; thence southwesterly to the beginning point.

(i) In this anchorage the requirements of recreational and other small craft shall predominate.

(ii) Anchorage, mooring, and boating activities conforming to applicable City of Los Angeles ordinances and regulations adopted pursuant thereto are allowed in this anchorage.

* * * * *

3. By revising § 110.214(a)(14) to read as follows:

(a) * * *

(14) *Nonanchorage U (Los Angeles Harbor).* An area enclosed by a line beginning at latitude 33°44'00.0" N., longitude 118°15'12.2" W.; thence southerly to latitude 33°43'48.7" N., longitude 118°15'06.4" W.; thence easterly to latitude 33°43'49.7" N., longitude 118°15'03.9" W.; thence northerly to latitude 33°44'01.1" N.,